Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-1524

FOOD DRIVERS, HELPERS AND WAREHOUSEMEN EMPLOYEES PHILADELPHIA AND VICINITY, and CAMDEN AND VICINITY, NEW JERSEY, LOCAL 500, and WILLIAM O'FARRELL, Vice President,

Petitioners,

v.

FOX TRANSPORT SYSTEM and FOX WAREHOUSING AND DISTRIBUTION CO.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

RESPONDENTS' BRIEF IN OPPOSITION.

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QUESTION PRESENTED.

Whether the underlying dispute in this case was one which the parties were contractually bound to resolve through their grievance procedure rather than by a strike?

STATEMENT OF THE CASE.

Petitioners seek review of a decision of the United States Court of Appeals for the Third Circuit affirming the grant of a preliminary injunction by the United States District Court for the Eastern District of Pennsylvania on June 19, 1974.[1] The injunction terminated a strike in violation of a collective bargaining agreement, and directed the parties to submit the underlying issues to the contractual grievance procedure. The Court's jurisdiction was invoked under Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U. S. C. § 185, and the relief granted was as authorized by this Court in *Boys Markets, Inc. v. Retail Clerks Union Local 770,* 398 U. S. 235 (1970).

Respondents, Fox Transport System and Fox Warehousing and Distributing Co. (hereinafter jointly referred to as "Fox"), occupy a common situs at 8th and Oregon Avenue in Philadelphia (32a, 34a).[2] Fox Transport System is a common carrier specializing in the transportation of perishable food stuffs by motor truck, and employing approximately 125 drivers and platform men who are represented for purposes of collective bargaining by Petitioner, Food Drivers, Helpers & Warehouse Employees, Philadelphia and Vicinity and Camden & Vicinity, New Jersey, Local 500 ("Local 500") (33a). Fox Warehousing and Distributing Co. is a private warehouse specializing in perishable food stuffs, and employs approximately 20 persons who are also represented by Local 500 (34a-35a).

Fox and Local 500 are parties to a collective bargaining agreement for the period July 1, 1973, to March 31,

1. The Order of the District Court and of the Appeals Court appear as Appendix "A" and "B" respectively to the Petition for a Writ of Certiorari.

2. All references are to the Appendix filed in the Appeals Court.

1976, known as the National Master Freight Agreement and Philadelphia, Pennsylvania & Vicinity Local Cartage Supplemental Agreement ("the contract") (Para. 6, 4a, 246a).

The contract includes the following provisions: (1) a no-strike clause (P-1, Art. 44, § 1, 178a);[3] (2) a local and a national grievance procedure for resolving disputes during the life of the Agreement (P-1, Art. 44, 178a-181a, Art. 8, 170a); (3) an expedited grievance procedure for resolving disputes over whether the Employer is handling "struck goods" (P-1, Art. 9, §§ 2 and 5, 176a-177a), and (4) provisions regulating the seniority rights of employees affected by a change in an employer's operation such as the opening or closing of a new branch or facility (P-1, Art. 5, 165a-169a).

For many years, Fox has done business with the Great Atlantic and Pacific Tea Company ("A&P") on a daily basis. This service has included transporting perishable products from suppliers to the A&P warehouse in Florence, New Jersey, and making deliveries to A&P's various retail outlets in the Philadelphia area (39a, 100a-101a, 182a-185a). Although these services occasionally include the transporting of fresh meat, a great deal of A&P's fresh meat in recent years has been transported by Guerin Special Motor Freight ("Guerin"), a contract carrier (49a, 77a).

In performing its contract with A&P, Guerin maintained a terminal adjacent to the A&P warehouse at Florence (49a). Guerin's employees are also represented by Local 500, but are covered under a separate collective bargaining agreement between Local 500 and a group of

3. The no-strike clause reads as follows:

"The Union and the Employers agree that there shall be no strike, lockout, tie-up or legal proceedings without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise."

employers in the food industry known as the "Food Group Contract". Fox is not a party to the food group contract and Guerin is not a party to the contract covering the Fox employees (51a).

In the Spring of 1974, Guerin notified A&P that it was terminating the transportation contract between them, and vacating the terminal at Florence as of June 28, 1974. A&P then requested Fox to substantially increase the volume of fresh meat which it would transport for A&P beginning July 1, 1974 (84a). As a common carrier (as opposed to a contract carrier such as Guerin), Fox would have no contract with A&P, and further, could not decline goods tendered unless it lacked the capacity to handle them (85a).

As the June 28 deadline for Guerin to cease operations approached, Local 500 took two steps: (1) it struck Guerin at Florence (78a),[4] and (2) it sent Fox a telegram demanding that Fox grant seniority rights to all the former Guerin employees (88a-89a).

At approximately 10:30 A. M. on June 18, 1974, A&P contacted Fox and asked Fox to receive and deliver to various local A&P outlets three truckloads of fresh meat which were due to arrive shortly from the B&B Packing Co. ("B&B") in the mid-west. Fox had the requisite capacity and agreed to A&P's request (39a-40a, 42a, 97a-103a, 182a-242a). The three truckloads were brought to Oregon Avenue by B&B that morning and the product was off-loaded by the B&B employees (111a-114a). Fox was hired and paid by A&P for performing this service. Guerin was not involved (39a, 102a).

At approximately noon on June 18, 1974, without prior warning, Local 500 struck Fox by posting pickets at the entrance to the Oregon Avenue facility. The picket signs

4. The precise nature of the dispute between Local 500 and Guerin is not of record. Presumably, it was related to the pending shutdown.

read: "STRIKE, TEAMSTERS LOCAL 500" (35a-37a, 115a). Local 500's Vice President, William O'Farrell ("O'Farrell") was on the picket line (36a).

When the strike began, the Respondents' Vice President, Frederick Fox, Jr., went out to the picket line and asked O'Farrell the purpose of the strike. During that and subsequent conversations that same day, O'Farrell gave two reasons for the strike: (1) to compel Fox to grant seniority rights to the former Guerin employees (48a), and (2) to prevent Fox from handling what O'Farrell characterized as "struck goods", referring to the three shipments received from B&B which were then at the loading dock (37a-38a).

When the picket line went up, Fox had approximately 70 trucks out on dispatch making deliveries and pick ups. As these trucks returned, most of them loaded with perishable products, the drivers stopped their trucks outside the picket line and joined the strike, resulting in a traffic jam of nearly 70 vehicles backed up on Oregon Avenue (52a-53a). The prospect of massive economic loss increased with each hour that the product remained on the trucks rather than in the warehouse where it could be properly protected (62a-65a).

At no time prior to the strike did Local 500 file a grievance on either the seniority issue or the struck goods issue (44a).

At the hearing on Fox's application for a preliminary injunction against the strike, Local 500 elected to put on no case at all (126a). Frederick Fox, Jr., testified that Fox was prepared to have both the question of the seniority rights of the former Guerin employees and the question of whether the goods being handled at A&P's request by Fox were "struck goods" decided in the grievance procedure (44a-45a, 50a). The Court found that the parties were

contractually bound to resolve those issues in the grievance machinery, and, in granting the preliminary injunction, ordered the parties to do so (244a, 245a).

In compliance with this directive, both issues were submitted through the grievance procedure to the National Grievance Committee. The National Grievance Committee assumed jurisdiction and, on October 30, 1974, over the signatures of Frank E. Fitzsimmons, International President of the Teamsters, and of William McIntyre, the Employer Co-Chairman, both issues were decided adversely to Local 500. A true copy of the Decision on the seniority issue appears in the Supplemental Appendix at S-1, and a true copy of the Decision on the "struck goods" issue appears in the Supplemental Appendix at S-2.

ARGUMENT.

I. The Underlying Dispute in This Case Was One Which the Parties Were Contractually Bound to Resolve Through Their Grievance Procedure Rather Than by a Strike.

A. The Action of the National Grievance Committee in Assuming Jurisdiction Over the Issues and Deciding Them Is Determinative of Their Arbitrability Under This Contract.

The contract covering Fox and Local 500 establishes the National Grievance Committee as the decision-making body of last resort for all disputes involving an interpretation of the contract. The Committee is composed of an equal number of Union and Employer representatives (P-1, Art. 8, 170a). With respect to any issue presented to the Committee, the contract provides as follows:

> ". . . If the National Grievance Committee resolves the dispute by a majority vote of those present and voting, such decision shall be final and binding upon all parties." (171a) [5]

In accordance with the Court's decree, both the question of the seniority rights of the former Guerin employees and the question of whether Fox was handling struck goods were submitted to the National Grievance Committee. The Committee rendered a decision on the merits denying Local 500's claims (S-1, S-2).

While it is true that the submission of these issues to the grievance procedure was ordered by the Court, the Court by no means compelled the National Grievance

5. This type of bi-lateral substitute for third party arbitration is its legal equivalent. *General Drivers v. Riss*, 372 U. S. 517 (1963).

Committee either to assume jurisdiction over the issues or to render a decision on the merits. Both of these steps were discretionary acts on the part of the National Grievance Committee. The fact that the highest representatives of the parties who negotiated the contract deemed the issues presented as ones properly to be resolved in the grievance procedure ought to be determinative of the question of their arbitrability under this contract.

B. The Issue Potentially Raised in the Cases Cited by Petitioners Is Not Present in This Case.

Petitioners seek to interest this Court in an asserted conflict between the decision of the United States Court of Appeals for the Third Circuit in *NAPA Pittsburg, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union 926*, 502 F. 2d 321 (1974), *cert. denied*, No. 74-419, — U. S. — (1974), and the decision of the United States Court of Appeals for the Fifth Circuit in *Amstar Corporation v. Amalgamated Meat Cutters and Butcher Workmen*, 468 F. 2d 1372 (1972). However, the issue potentially raised by the asserted conflict between those decisions simply is not raised by the facts of this case.

In *NAPA*, two local unions were involved, only one of which had a contract with the plaintiff-employer. The local union without a contract began picketing the employer, and the other local union's members honored the picket line. The employer sought and obtained a *Boys Markets* injunction, contending that whether the union representing its employees had a contractual right to honor the other union's picket line was an arbitrable issue. The Court of Appeals for the Third Circuit upheld the grant of a preliminary injunction.

This same basic pattern—two local unions, one with a contract, one without, and the one with a contract honors a picket line by a local without a contract—was involved in *Amstar Corporation, supra,* and in that case the Fifth Circuit determined that the issue presented was not an arbitrable issue.

The vital distinction in the present case is that *there is only one Union involved and that Union took direct strike action against the Employer with whom it has a contract. Local 500 was not "honoring" the picket line, it was manning it.* Accordingly, the issue of the arbitrability of the right to honor another Local's picket line is not presented in this case. The issues which were presented—the seniority rights of former Guerin employees and the struck goods issue—were arbitrable and have in fact been arbitrated.

CONCLUSION.

For reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

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& MONTEVERDE,
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Supplemental Appendix.

National Grievance Committee

Union Chairman:
Frank E. Fitzsimmons
25 Louisiana Ave., N.W.
Washington, D. C. 20001

Employer Chairman:
William McIntyre
1150 17th Street, N. W.
Washington, D. C. 20036

October 30, 1974

Mr. William M. Brown, Secy-Treas.
Teamsters Local Union 500
1100-28 East Lycoming Street
Philadelphia, Pa. 19124

Mr. Frederick W. Fox, Jr.
Fox Transport System
21 S. 5th Street
Philadelphia, Pa. 19106

N-10-74-E16 Local 500 (Philadelphia) vs Fox Transport System
Referred EC JAC, July, 1974, Case No. C-179-74.
NMFA, Article 5, Section 3.

Gentlemen:

Please be advised that the National Grievance Committee on October 30, 1974, adopted a motion that based on the transcript, the claim of the Union be denied.

Very truly yours,

Frank E. Fitzsimmons
Union Chairman

William McIntyre
Employer Chairman

cc:
J. Trerotola
R. Flynn
J. Hutchinson

National Grievance Committee

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Fox Transport System
21 S. 5th Street
Philadelphia, Pa. 19106

Mr. William M. Brown, Secy-Treas.
Teamsters Local Union 500
1100-28 East Lycoming Street
Philadelphia, Pa. 19124

N-7-74-E1 Fox Transport System vs Local 500 (Philadelphia)
Dispute, NMFA, Article 9, Section 2

Gentlemen:

Please be advised that the National Grievance Committee, on October 30, 1974, adopted a motion that based on the Subcommittee's report, the claim of the Union be denied.

Very truly yours,

Frank E. Fitzsimmons
Union Chairman

William McIntyre
Employer Chairman

cc:
J. Trerotola
R. Flynn
Jim Hutchinson